

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2005-0613-PST-E TCEQ ID: RN101909695 CASE NO.: 25052**  
**RESPONDENT NAME: RFK ENTERPRISES, INC. DBA FOOD SPOT 2**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 5011 Monroe Street, Groves, Jefferson County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 29, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Mr. Terry Murphy, Air Enforcement Section, MC 149, (512) 239-5025  <b>TCEQ Regional Contact:</b> Ms. Alyssa Taylor, Dallas/Ft. Worth Regional Office, MC R-4, (817) 588-5828  <b>Respondent:</b> Mr. Farooq Abdul-Satter, President, RFK Enterprises, Inc. 5011 Monroe, Groves, Texas 77619  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> December 29, 2004</p> <p><b>Date of NOE Relating to this Case:</b> February 26, 2005</p> <p><b>Background Facts:</b> The EDRP was filed on September 5, 2006. After clarifying issues related to Respondent's compliance, an EDFARP was filed on March 4, 2008. The Respondent filed an answer and on August 7, 2008, a preliminary hearing was held, and a settlement conference resulted in an Agreed Order on September 22, 2008.</p> <p><b>Current Compliance Status:</b> All of the violations have been corrected.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to provide corrosion protection for the UST system [30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d)].</li> <li>Failed to ensure that all tanks are monitored in a manner which will detect a release at a frequency of at least once every month and failed to monitor the UST system in a manner which will detect a release from any portion of the piping system [30 TEX. ADMIN. CODE § 334.50(b)(1)(a) and 334.50(b)(2) and TEX. WATER CODE § 26.3475(a) and (c)(1)].</li> <li>Failed to properly cap and secure all monitoring wells to prevent unauthorized access, tampering and any deliberate or accidental depositing of unauthorized substances and prevent surface run-off from entering the well [30 TEX. ADMIN. CODE § 334.46(g)].</li> </ol>	<p><b>Total Assessed:</b> \$4,950</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$225/\$4,725</p> <p>The Respondent has paid \$225 of the administrative penalty. The remaining amount of \$4,725 of the administrative penalty shall be payable in 35 monthly payments of \$135.00 each.</p> <p><b>Site Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that RFK has implemented the following corrective measures:</p> <ol style="list-style-type: none"> <li>Provided corrosion protection on February 5, 2005.</li> <li>Submitted records of release detection monitoring on April 8, 2005.</li> <li>Properly capped and secured all monitoring wells on March 25, 2005.</li> </ol>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision March 02, 2005

DATES	Assigned	28-Feb-2005	Screening	10-Mar-2005	Priority Due	29-Apr-2005	EPA Due	
	PCW	11-Sep-2008						

## RESPONDENT/FACILITY INFORMATION

Respondent	RFK Enterprises, Inc. dba Food Spot 2		
Reg. Ent. Ref. No.	RN101909695		
Additional ID No(s).	Petroleum Storage Tank Registration No. 16559		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor Source

## CASE INFORMATION

Enf./Case ID No.	25052	No. of Violations	3
Docket No.	2005-0613-PST-E	Order Type	1660
Case Priority	2	Enf. Coordinator	Terry Murphy
Media Program(s)	Petroleum Storage Tank	EC's Team	Enforcement Team 4
Multi-Media			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

## TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$5,500

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0% Enhancement Subtotals 2, 3, &amp; 7 \$0

Notes The Respondent has not received any Notices of Violations (NOVs) or Orders within the past five years.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction Subtotal 5 -\$550

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with a small x)

Notes The Respondent became compliant on April 8, 2005.

Economic Benefit 0% Enhancement\* Subtotal 6 \$0

Total EB Amounts	\$1,269
Approx. Cost of Compliance	\$8,000

\*Capped at the Total EB \$ Amount

## SUM OF SUBTOTALS 1-7

Final Subtotal \$4,950

## OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes No deferral offered for non-expedited settlement.

Final Penalty Amount \$4,950

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$4,950

## DEFERRAL

0% Reduction

Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral offered for non-expedited settlement.

## PAYABLE PENALTY

\$4,950

<b>Screening Date</b> 10-Mar-2005	<b>Docket No.</b> 2005-0613-PST-E	<b>PCW</b>
<b>Respondent</b> RFK Enterprises, Inc. dba Food Spot 2	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 25052	<i>PCW Revision March 02, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN101909695		
<b>Additional ID No(s).</b> Petroleum Storage Tank Registration No. 16559		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Terry Murphy		
<b>Site Address</b>	5011 Monroe Street, Groves, Jefferson County	

### Compliance History Worksheet

>> Compliance History *Site Enhancement* (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	no	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	no	0%
	Participation in a voluntary pollution reduction program	no	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	no	0%

**Adjustment Percentage (Subtotal 2)** 0%

>> Repeat Violator (Subtotal 3)

No <

**Adjustment Percentage (Subtotal 3)** 0%

>> Compliance History *Person Classification* (Subtotal 7)

Average Performer <

**Adjustment Percentage (Subtotal 7)** 0%

>> Compliance History Summary

**Compliance History Notes** The Respondent has not received any Notices of Violations (NOVs) or Orders within the past five years.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

<b>Screening Date</b> 10-Mar-2005	<b>Docket No.</b> 2005-0613-PST-E	<b>PCW</b>
<b>Respondent</b> RFK Enterprises, Inc. dba Food Spot 2	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 25052	<i>PCW Revision March 02, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN101909695		
<b>Additional ID No(s).</b> Petroleum Storage Tank Registration No. 16559		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Terry Murphy		
<b>Violation Number</b>	<div style="border: 1px solid black; padding: 2px;">1</div>	
<b>Primary Rule Cite(s)</b>	<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 334.49(a)(1)</div>	
<b>Secondary Rule Cite(s)</b>	<div style="border: 1px solid black; padding: 2px;">Tex. Water Code § 26.3475(d)</div>	
<b>Violation Description</b>	<div style="border: 1px solid black; padding: 2px;">Failure to provide corrosion protection for the UST system, as documented during the December 29, 2004 investigation.</div>	
<b>Base Penalty</b>		<div style="border: 1px solid black; padding: 2px;">\$10,000</div>

>> **Environmental, Property and Human Health Matrix**

		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
OR	Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; padding: 2px;">25%</div>
	Potential	<div style="border: 1px solid black; padding: 2px;">X</div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	

>> **Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	
	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; padding: 2px;"></div>
<b>Matrix Notes</b>	Human health or the environment could be exposed to significant amounts of contaminants which may exceed levels that are protective of human health and environmental receptors.				

Adjustment 

-\$7,500

Base Penalty Subtotal 

\$2,500

**Violation Events**Number of Violation Events 

1

mark only one use a small x	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	quarterly	<div style="border: 1px solid black; padding: 2px;">X</div>
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	annual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>
	single event	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>

Violation Base Penalty 

\$2,500

One quarterly event is recommended from the December 29, 2004 investigation until the February 15, 2005 compliance date, to make the penalty commensurate with the situation.

**Economic Benefit (EB) for this violation****Statutory Limit Test**Estimated EB Amount 

\$828

Violation Final Penalty Total 

\$2,250

This violation Final Assessed Penalty (adjusted for limits) 

\$2,250

**Economic Benefit Worksheet**

Respondent RFK Enterprises, Inc. dba Food Spot 2

Case ID No. 25052

Reg. Ent. Reference No. RN101909695

Additional ID No(s). Petroleum Storage Tank Registration No. 16559

Media [Statute] Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment	\$6,000	29-Dec-2004	15-Feb-2005	0.1	\$39	\$789	\$828
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Cost to install corrosion control protection. Date required (December 29, 2004) is the investigation date and the final date (February 15, 2005) is the date of compliance.

Approx. Cost of Compliance **\$6,000****TOTAL** **\$828**

<b>Screening Date</b> 10-Mar-2005	<b>Docket No.</b> 2005-0613-PST-E	<b>PCW</b>
<b>Respondent</b> RFK Enterprises, Inc. dba Food Spot 2	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 25052	<i>PCW Revision March 02, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN101909695		
<b>Additional ID No(s).</b> Petroleum Storage Tank Registration No. 16559		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Terry Murphy		
<b>Violation Number</b>	<input type="text" value="2"/>	
<b>Primary Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.50(b)(1)(A) &amp; 334.50(b)(2)"/>	
<b>Secondary Rule Cite(s)</b>	<input type="text" value="Tex. Water Code § 26.3475(a) and (c)(1)"/>	
<b>Violation Description</b>	<div style="border: 1px solid black; padding: 5px;"> <p>The Respondent failed to ensure that all tanks are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failed to monitor the UST system in a manner which will detect a release from any portion of the piping system, as documented during the December 29, 2004 investigation.</p> </div>	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

>> **Environmental, Property and Human Health Matrix**

	<b>Harm</b>			
	Major	Moderate	Minor	
<b>Release</b>				
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text"/>

**Matrix Notes**

Human health or the environment could be exposed to significant amounts of contaminants which may exceed levels that are protective of human health and environmental receptors.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

mark only one use a small x	<table border="1" style="border-collapse: collapse;"> <tr><td style="padding: 2px;">daily</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">monthly</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">quarterly</td><td><input checked="" type="checkbox"/></td></tr> <tr><td style="padding: 2px;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">annual</td><td><input type="text"/></td></tr> <tr><td style="padding: 2px;">single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input checked="" type="checkbox"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>
daily	<input type="text"/>												
monthly	<input type="text"/>												
quarterly	<input checked="" type="checkbox"/>												
semiannual	<input type="text"/>												
annual	<input type="text"/>												
single event	<input type="text"/>												

**Violation Base Penalty**

One quarterly event is recommended from the December 29, 2004 investigation until the March 10, 2005 enforcement screening date, to make the penalty commensurate with the situation.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$432"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$2,250"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,250"/>	

**Economic Benefit Worksheet**

Respondent RFK Enterprises, Inc. dba Food Spot 2

Case ID No. 25052

Reg. Ent. Reference No. RN101909695

Additional ID No(s). Petroleum Storage Tank Registration No. 16559

Media [Statute] Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

<b>Avoided Costs</b>		ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)					
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment	\$1,500	29-Dec-2004	08-Apr-2005	0.3	\$21	\$411	\$432
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated costs for monthly leak detector tests and costs of monitoring the UST piping for leaks. Date required (December 29, 2004) is investigation date and the final date (April 8, 2005) is the date of compliance.

Approx. Cost of Compliance \$1,500

TOTAL \$432



Screening Date 10-Mar-2005

Docket No. 2005-0613-PST-E

PCW

Respondent RFK Enterprises, Inc. dba Food Spot 2

Policy Revision 2 (September 2002)

Case ID No. 25052

PCW Revision March 02, 2005

Reg. Ent. Reference No. RN101909695

Additional ID No(s). Petroleum Storage Tank Registration No. 16559

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Terry Murphy

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.46(g)

Secondary Rule Cite(s)

Violation Description

Failure to properly cap and secure (or lock) all monitoring wells to prevent unauthorized access, tampering, and any deliberate or accidental depositing of unauthorized substances and prevent surface runoff from entering the well. Specifically, the monitoring well was not properly sealed and the cap was resting on top of the well, which was sloped lower than the surrounding ground surface, as documented during the December 29, 2004 investigation.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

		Harm			Percent
OR	Release	Major	Moderate	Minor	
	Actual				
	Potential			x	

Percent 5%

## &gt;&gt; Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent

Matrix Notes

Human health or the environment could be exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health and environmental receptors.

Adjustment -\$9,500

Base Penalty Subtotal \$500

## Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$500

One single event is recommended based on documentation of the violation during the December 29, 2004 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$9

Violation Final Penalty Total \$450

This violation Final Assessed Penalty (adjusted for limits) \$450

**Economic Benefit Worksheet**

Respondent RFK Enterprises, Inc. dba Food Spot 2

Case ID No. 25052

Reg. Ent. Reference No. RN101909695

Additional ID No(s). Petroleum Storage Tank Registration No. 16559

Media [Statute] Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item	Item	Date	Final	Yrs	Interest	Onetime	EB
Description	Cost	Required	Date		Saved	Costs	Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$500	29-Dec-2004	29-Mar-2005	0.2	\$0	\$8	\$9
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs The estimated cost to have the well properly capped, sealed and secured. Date Required (December 29, 2004) is the investigation date and the Final Date (March 29, 2005) is the date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$9

## Compliance History

Customer/Respondent/Owner-Operator: CN600981963 RFK Enterprises, Inc. Classification: AVERAGE Rating: 8.380

Regulated Entity: RN101909695 FOOD SPOT 2 Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 16559

Location: 5011 MONROE ST, GROVES, TX, 77619 Rating Date: 9/1/04 Repeat Violator: NO

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: March 10, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 10, 2000 to March 10, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Chris Friesenhahn Phone: 210-403-4077

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6. Comments:

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1. 02/25/2005 (345739)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

- F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
RFK ENTERPRISES, INC. DBA  
FOOD SPOT 2,  
TCEQ ID NO. RN101909695

§  
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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2005-0613-PST-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding RFK Enterprises, Inc. dba Food Spot 2 ("RFK") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and RFK, appear before the Commission and together stipulate that:

1. RFK owns and operates a convenience store with retail sales of gasoline located at 5011 Monroe Street in Groves, Jefferson County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.040. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and RFK agree that the Commission has jurisdiction to enter this Agreed Order, and that RFK is subject to the Commission's jurisdiction.
4. RFK received notice of the violations alleged in Section II ("Allegations") on or about March 2, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by RFK of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of four thousand nine hundred fifty dollars (\$4,950.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). RFK has paid two hundred twenty-five dollars (\$225.00) of the administrative penalty. The remaining amount of four thousand seven hundred twenty-five dollars (\$4,725.00) of the administrative penalty shall be payable in 35 monthly payments of one hundred thirty-five dollars (\$135.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not less than 30 days following the date of the previous payment until paid in full. If RFK fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without a demand notice. In addition, the failure of RFK to meet the payment schedule of this Agreed Order, constitutes the failure by RFK to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and RFK have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that RFK has implemented the following corrective measures:
  - a. Provided corrosion protection on February 5, 2005;
  - b. Submitted records of release detection monitoring on April 8, 2005; and
  - c. Properly capped and secured all monitoring wells on March 25, 2005.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that RFK has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

RFK, as owner and operator of the Facility, is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d) by failing to provide corrosion protection for the UST system, as documented during the December 29, 2004 investigation.
2. 30 TEX. ADMIN. CODE § 334.50(b)(1)(a) and 334.50(b)(2) and TEX. WATER CODE § 26.3475(a) and (c)(1) by failing to ensure that all tanks are monitored in a manner which will detect a release at a frequency of at least once every month and failed to monitor the UST system in a manner which will detect a release from any portion of the piping system, as documented during the December 29, 2004 investigation.
3. 30 TEX. ADMIN. CODE § 334.46(g) by failing to properly cap and secure all monitoring wells to prevent unauthorized access, tampering and any deliberate or accidental depositing of unauthorized substances and prevent surface run-off from entering the well.

## **III. DENIALS**

RFK generally denies each allegation in Section II ("Allegations").

## **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that RFK pay administrative penalties as set forth in Section I, Paragraph 6 above. The payment of these administrative penalties and RFK's compliance with all the terms and conditions set forth in this Agreed Order resolve only those matters described here. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be sent with the notation "Re: RFK Enterprises, Inc. dba Food Spot 2; Docket No. 2005-0613-PST-E"; Enforcement ID No. 25052. to:

Financial Administration Division, Revenues  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

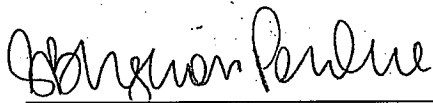
2. The provisions of this Agreed Order shall apply to and be binding upon RFK. RFK is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in the Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against RFK in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of the TEX. WATER CODE or the TEX. HEALTH & SAFETY CODE.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to RFK, or three days after the date on which the Commission mails notice of the Order to RFK, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission



\_\_\_\_\_  
For the Executive Director

11/25/2008

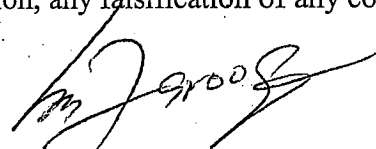
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

FAROOQ - ABDUL-SATTAR

\_\_\_\_\_  
Name (Printed or typed)

Authorized representative of

RFK Enterprises, Inc. dba Food Spot 2

9-22-08  
\_\_\_\_\_  
Date

President -

\_\_\_\_\_  
Title